ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	GC Docket No. 96-55
Notice of Proposed Rulemaking	)	
on The Treatment of Confidential	)	
Information Submitted to the	)	
Commission	)	

COMMENTS

MCI TELECOMMUNICATIONS CORPORATION

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Dated: June 14, 1996

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SUMMARY

It is essential that Commission policy and rules pertaining to the confidential treatment of materials submitted before it assure that interested parties can participate meaningfully in proceedings that may affect their vital interests. In this regard, materials submitted to support positions taken -- especially information offered by dominant carriers to justify their proposed tariffs -- must be offered on the public record, in the absence of compelling demonstrations that private interests will be compromised by the revelation of alleged competitively sensitive materials.

With this the case, MCI recommends that the Commission adopt the following approach to handling requests for the confidential treatment of information:

- -- Parties seeking the confidential treatment of submitted information have the burden of proof whenever challenges are made to their positions;
- -- Commission action in proceedings cannot be based on information not available to all interested parties;
- -- In evaluating requests for confidential treatment, the Commission must recognize that the public interest in disclosure (versus non-disclosure) will vary depending on the type of proceeding, the relevance and materiality of the information to the proceeding and the nature of the materials;
- -- Requests for confidential treatment should not be entertained whenever a statute or rule requires disclosure, such as in the case of Local Exchange Carrier tariff cost support, because a "balancing" (as between disclosure and non-disclosure) was performed when the statute or rule was enacted.

The emergence of competitive markets, and the Commission's ability to regulate effectively in those markets, requires no less.

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20005

In the Matter of	)	
	)	
Notice of Proposed Rulemaking on the Treatment of Confidential Information Submitted to the Commission	)	GC Docket No. 96-55

COMMENTS

MCI Telecommunications Corporation (MCI) hereby submits these initial comments in response to the Commission's "Notice of Proposed Rulemaking" (FCC 96-55), GC Docket No. 96-55, released March 25, 1996 (NPRM). Therein, comments are sought on a proposed policy that would guide the Commission in evaluating requests for the confidential treatment of information under the Freedom of Information Act (FOIA).[1] Further, the Commission is seeking comment on the conditions under which various kinds of information should be routinely made available for public inspection.

In these comments, MCI recommends that the Commission adopt a general uniform approach for handling requests for the confidential treatment of information in all proceedings. This would include the following precepts:

- Those requesting that information be treated as "confidential" must bear the burden of proof when challenges are made to the appropriateness of their claims;"
- Commission decisions in proceedings before it cannot be based on materials and information not available to all interested parties;

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[1] 5 U.S.C. Sec. 552.

- In conducting the legal balancing test under the FOIA to determine whether public disclosure of confidential material is appropriate, the public interest in disclosure (versus nondisclosure) of confidential material will vary, depending upon the type of proceeding, the relevance and materiality of the information to issues in the proceeding and the nature of the material.

- The legal balancing test ought not to be performed by the Commission when a statute or rule requires disclosure, such as in the case of submissions to the Commission of local exchange carrier (LEC) tariff cost support data. In such an instance, the law has already performed the balancing test in favor of disclosure.

INTRODUCTION AND BACKGROUND

In recent years, a number of dominant carriers have been requesting confidential treatment of information submitted to the Commission on the ground that the information is "competitively sensitive." Commission responses to these requests have been widely inconsistent, but it increasingly has displayed a willingness to grant them.

For example, during the past year, a number of LECs, primarily Regional Bell Operating Companies, have proposed tariff revisions along with requests that essential cost support information required by the Commission's rules not be entered on the public record, ostensibly because that information is "competitively sensitive" and would compromise the carriers in their competitive marketplace endeavors. This growing phenomenon, if left unchecked, ultimately would result in the foreseeable submission of economic support data by all LECs for evaluation solely by Commission staff -- to the exclusion of interested members of the public, specifically, the carriers'

ratepayers -- in adjudging the adequacy of such information and, more importantly, the lawfulness of the rates and charges allegedly supported by such information.

Unfortunately, in the tariffing arena, the Common Carrier Bureau's (Bureau's) decisions on the confidentiality of LEC cost support information have been far from consistent. An example of this inconsistency can be seen in comparing the Bureau's decision regarding Southwestern Bell Telephone Company's (SWBT's) Transmittal No. 2524[2] to its decision regarding SWBT Transmittal Nos. 2470 and 2489.[3] The latter provides a list of minimum requirements that a LEC must meet in order to receive confidential treatment of information submitted. However, the Transmittal No. 2524 Order, issued several months later, makes no reference to these requirements. Moreover -- despite a statutory requirement for LEC tariff cost support -- the Bureau has allowed LECs to avoid the tariff cost support requirement so long as it grants a waiver.[4] To make matters worse, in some instances, the Bureau has allowed LECs to avoid the requirement without even obtaining a waiver.[5] Unfortunately, the Bureau's actions

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[2] Order, Southwestern Bell Telephone Company Tariff 73, Transmittal No. 2524, rel. April 4, 1996 (Transmittal No. 2524 Order).

[3] Order Initiating Investigation, Southwestern Bell Telephone Company Transmittal Nos. 2470, 2489, CC Docket No. 95-158, rel. October 13, 1995 (SWBT Suspension Order).

[4] Transmittal No. 2524 Order at para. 9.

[5] See, e.g., FCC Public Notice, DA 96-304, Report No. TD-6, rel. March 7, 1996.

typically do not discuss what information, if any, those seeking confidential treatment have provided in order to discharge their burden of demonstrating confidentiality and, frequently, the Bureau has granted sua sponte waivers, apparently without any interest having been expressed by submitters of the materials for confidential treatment.[6]

Fortunately, in initiating this proceeding, the Commission has recognized that issues surrounding the confidential treatment of various types of data must be addressed, lest there result a reduction in "the amount of information publicly available to facilitate public participation in the regulatory process."[7] Given the public interest obligation of ensuring meaningful public participation in regulatory proceedings, the Commission quite properly is examining whether it should adopt new policies governing the treatment of information submitted to it in confidence.[8] As explained herein, MCI believes that these additional policies are needed -- and promptly.

I. THOSE SUBMITTING INFORMATION CLAIMED TO BE "CONFIDENTIAL" BEAR THE BURDEN OF PROOF OF SO DEMONSTRATING

The Commission is seeking comment on whether it should adopt additional requirements for substantiating confidentiality claims.[9] Specifically, it is proposing that the following

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[6] See, e.g., Transmittal No. 2524 Order at para. 9.

[7] NPRM at para. 31.

[8] Id. at para. 31.

[9] Id. at para. 59.

information be required:

> (1) A statement of the specific information that the submitter believes should receive confidential treatment;
> (2) The length of time for which confidential treatment is desired;
> (3) Measures taken by the business to prevent undesired disclosure to others;
> (4) The extent to which the information has already been disclosed to others;
> (5) Specific information showing the degree to which the information concerns a service that is subject to competition; and
> (6) Specific information concerning why disclosure would result in substantial harmful effects to the business' competitive position.[10]

MCI submits that imposing these requirements on those seeking confidential treatment of information furnished to the Commission would be consistent with a policy approach that favors the public availability of information and should reasonably satisfy the Commission's expressed concern that "proceedings cannot be effective unless meaningful information is made available to the interested persons."[11] Additionally, however the Commission should add an additional requirement to clarify -- and remove any uncertainty -- that the burden of proof when confidential treatment is requested is on the party seeking it and not on any party challenging the request.

While not explicitly stated in its Rules, the Commission currently follows this principle (with a few non-controversial, limited exceptions listed in Section 0.457(d)(i)-(iv) of the

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[10] Id. at para. 57.

[11] Id. at para. 31.

Rules). Section 0.459(b) of the Rules imposes the requirement that requests for confidential treatment of submitted information "contain a statement of the reasons for withholding the materials from [public] inspection." Section 0.459(c) even provides that "casual requests" for confidential treatment of materials will not be considered, and Section 0.459(d) states that the Commission will treat information submitted to it as confidential only when a requester "presents by a preponderance of the evidence a case for non-disclosure consistent with the provisions of the Freedom of Information Act, 5 U.S.C. Sec. 552." 47 C.F.R. Sec. 0.459(a),(b),(c). These rule provisions clearly, and quite correctly, impose the burden of proof on the party requesting confidentiality.

Moreover, the "burden of proof" principle is supported by Commission precedent. For example, a recent Bureau decision required that, before information submitted to it can be treated confidentially, those claiming that the information is competitively sensitive must (1) make a specific showing explaining why such treatment is required; (2) satisfy the burden of proving the appropriateness of such treatment by a "preponderance of evidence;" and (3) show a "link" between the confidential data and specific examples of competitive harm in the form of "actual competition and a likelihood of substantial competitive injury."[12]

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[12] SWBT Suspension Order at paras. 6-8; see also Letter from Regina M. Keeney, Chief, Common Carrier Bureau to Thomas A. Padja, Esquire, Southwestern Bell Telephone Company, dated

Adoption of the above changes would not make it unreasonably difficult for submitters of information to substantiate claims of confidentiality for information truly entitled to confidential treatment. The changes are certainly appropriate in light of the strong preference of the Administrative Procedure Act (APA)[13] and Commission policy for public disclosure of information submitted on the record in agency proceedings. They would help to minimize "secrecy" in proceedings intended (and needed) to be public and could, by clearly placing responsibility on submitters to justify any exceptions to public disclosure of material, deter frivolous requests for, or grants of, confidential treatment.

II. COMMISSION DECISIONS CANNOT BE LEGALLY OR RATIONALLY BASED ON MATERIALS NOT AVAILABLE TO PARTIES IN ADJUDICATIVE AND RULEMAKING MATTERS

The Commission seeks comment on its current approach of relying on "protective orders" to balance the goals of allowing for effective participation in Commission proceedings, on the one hand, and protecting regulatees from unnecessary disclosure of confidential information.[14] Among other things, the Commission asks whether its use of protective orders limits its ability to obtain information, on the other hand.[15] Although LECs often

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November 28, 1995 (RE: Southwestern Bell Transmittal Nos. 2498 and 2501) (DA 95-2395).

[13] 5 U.S.C. Secs. 551-59.

[14] NPRM at para. 30.

[15] Id. at para. 33.

take a public position that allowing access to their confidential information, even subject to a protective order, will cause them to be less willing to voluntarily submit information, there is no evidence of this. Indeed, it would seem that any failure or refusal to submit information required or requested by the Commission would impose great risks on the LECs in terms of their specific goals.

The Commission also asks if there are any problems with the current protective order approach.[16] Several problems exist. First, protective orders are no substitute for public disclosure, either in theory or in practice. Where a proceeding requires publicly available information, such as cost support in connection with dominant carrier tariff filings, only prompt and unrestricted access to the materials submitted can fulfill the requirement.[17] Moreover, as a practical matter, left to their own devices, parties holding claimed confidential material likely will seek to impose protective agreements that contain overly restrictive or onerous provisions.[18]

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[16] Id.

[17] By statute and Commission Rules, the time to challenge filed tariffs is limited and, accordingly, any delay resulting from the need first to enter agreements in order to obtain information will hamper the ability of tariff challengers to perform timely analyses and then prepare filings for submission to the Commission.

[18] For example, in Open Network Architecture Tariffs of US West Communications, Inc., DA 94-1236, CC Docket 94-128, MCI, to access information essential to performing its analyses, executed a non-disclosure agreement with US West Communication, Inc., that contained a provision to the effect that parties entering such agreements could not even discuss confidential information among

Second, protective agreements are burdensome. When they are used, parties are required to file twice: they must file both a full filing "under seal" and a redacted, or "public," version. After receipt, the Commission must ensure that non-public copies of filings are handled within the Commission in a manner that will protect them from disclosure to those not entitled to see them. And the public, including interested parties, is left with incomplete data in the public version of the filing. Those who review non-public information -- both private parties and Commission staff members as well -- must ensure that they do not use or reveal the information in the context of their public decisions or other undertakings, thus restricting unreasonably their involvement in future proceedings or, perhaps, the effective discharge of their employment obligations.

Third, the current protective order approach fails to recognize the varying public interest factors associated with in disclosure, depending upon the type of proceeding. For example, the use of protective orders in rulemaking proceedings (including tariff proceedings), which carry widespread public impact, would substantially interfere with the Commission's ability to obtain public comment and with the public's right to know the bases for Commission actions. On the other hand, the use of protective orders in connection with adjudicatory proceedings (which usually involve less of a widespread public impact) might not

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themselves. The obvious intent of this provision was to restrict discussions that could have been meaningful to the outcome of the proceeding.

substantially interfere with the "public's right to know." Currently, there is no Commission guidance concerning the particular circumstances under which protective orders are appropriate. The Commission thus should indicate a strong preference against the use of protective orders in rulemaking and other proceedings likely to have a broad public impact. Otherwise, members of the public with substantial stakes in the outcome of a proceeding may be limited in their ability to participate.

If the Commission determines that certain data are necessary to support a decision, it should not place the relevant data under seal. Rather, the information should "lose" its protected status at that point, especially if the decision has potentially widespread public impact. It is imperative that any decision by the Commission be based upon material available to all parties and not data kept from the public record. The Commission should adopt a requirement to this effect.

Both due process and APA requirements prohibit Commission decisions based on materials not available to parties in such proceedings. It is elementary that an agency's failure "to disclose the information upon which it relies" violates "quasi-adjudicatory" informal "notice" and "hearing" requirements.[19] Such "secret" decision-making permits "no such opportunity...

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[19] See U.S. Lines Inc. v. FMC, 584 F.2d 519, 535, 539 (D.C. Cir. 1978).

for a real dialogue or exchange of views,"[20] thereby doing violence "to the basic fairness concept of due process."[21] Consequently, Commission decision-making based on unavailable data, with a concomitant failure to disclose essential public material, is arbitrary and capricious and, therefore, legally objectionable.[22] To avoid this result, "the critical role of adversarial comment" requires timely disclosure of essential data,[23] independent of the agency's reliance on undisclosed data in its decision.[24]

III. THE PUBLIC INTEREST IN DISCLOSURE OF CONFIDENTIAL INFORMATION WILL VARY, DEPENDING UPON THE TYPE OF PROCEEDING, THE SIGNIFICANCE OF THE INFORMATION TO THE DISPUTE AND THE NATURE OF THE MATERIAL

The Commission also seeks comment on what disclosure standards should apply in various proceedings.[25] Under current procedures, a determination that materials are confidential does not automatically result in a finding that the materials should not be disclosed. Before determining whether confidential materials may remain undisclosed, the Commission must first weigh considerations favoring disclosure versus non-disclosure, and

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[20] Id. at 540.

[21] Id. at 541. See also Sea-Land Service, Inc. v. FMC, 653 F.2d 544, 551-52 (D.C. Cir. 1981).

[22] Id. at 533-35, 541-43.

[23] Id. at 542.

[24] Id. at 534.

[25] NPRM at para. 32.

then it must determine whether a "persuasive showing" has been made to warrant disclosure.[26]

In conducting this balancing test, a uniform approach should be applied that recognizes that the public interest in disclosure will vary depending upon the type of proceeding, the relevance and materiality of the subject information to the issues in the proceeding and the nature of the materials. The interest in disclosure is greatest when the information is central to the outcome of a proceeding that has widespread public impact. On the other hand, disclosure only under a protective order may be more appropriate when the impact will be felt primarily by the parties, or if the information is less crucial to the outcome of a proceeding.

Under the above approach, disclosure of confidential information is warranted in rulemaking proceedings because these will have a broad impact on the public, and the need for wide public participation and informational input will be substantial. Given the public interest calculus in these proceedings, such information should never be withheld. At the very least, where the information is not of decisional significance, it would have to be made available to anyone willing to execute a protective order, cumbersome as that may be.

On the other hand, disclosure under a protective order may be appropriate, even for crucial information in formal complaint

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[26] 47 C.F.R. Secs. 0.451(b)(5), 0.457(d)(1); 0.457(d)(2)(i); 0.461(f)(4).

proceedings when the impact will be felt primarily by the parties. In applying the balancing test, the Commission could recognize the more limited public interest, which could be satisfied by disclosures under protective orders.

Taking into consideration the nature of material submitted to the Commission, the balancing test should not, for example, generally subject audit materials to disclosure, although the public interest in disclosure of audit information would also depend upon the type of the proceeding and the relevance and materiality of the information to the issues in the proceeding. The Commission has departed from its policy of not publicly releasing audit reports only in extraordinary circumstances -- when: (i) the summary nature of the data contained in a particular report is not likely to cause the providing carrier substantial competitive injury; (ii) the release of the summary data and information is not likely to impair its ability to obtain information in future audits; and (iii) overriding public interest concerns favor release of the report.[27] In the past, the Commission has normally allowed submitters to request confidentiality for such data and has dealt with these requests on a case by-case basis.[28] The Commission should refine this policy along the lines of the suggested balancing test. Under this approach, there may be some instances when audit material should be released under a protective order, for example, in

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[27] NPRM at para. 52.

[28] Id.

rulemaking proceedings where the materials are relevant and material to the outcome of the proceeding.

A balancing approach should also be applied to confidential information submitted to the Commission pursuant to surveys or studies it requires, or when the Commission is considering publicly disclosing aggregated information derived from data claimed to be confidential. Given the potentially anti-competitive consequences of making public information about non-dominant carriers relating to billable minutes of various types of their services, or average rate/revenue per minute of their services, the Commission should treat such information with appropriate sensitivity.

Finally, the balancing test should also be applied when parties either base their requests on confidential information or seek to benefit from information that they want to protect from disclosure. In such instances, the balance should swing very strongly in favor of disclosure.

One exception where the Commission ought not to perform a balancing test is whenever a statute or rule requires disclosure. In such an instance, the law has already performed the balancing test. Therefore, the Commission should change its current rule -- permitting disclosure of confidential information upon a "persuasive showing" of the reasons for disclosure -- to reflect a "per se" disclosure rule in some types of proceedings.

For example, information submitted to the Commission by dominant LECs in support of their tariffs must always be

disclosed, since Commission Rules require such information to be publicly available. Even for services like expanded interconnection, where some LECs have argued falsely that there is effective competition, the Commission has clearly articulated an intent that LECs file cost information to support their tariffs. In the Switched Transport Order,[29] the Commission stated that "...tariffs implementing such discounts must satisfy the cost showing requirements for new services."[30] It further stated that "[t]ariffs are to be filed on 120 days notice, rather than the usual 45 days. This lengthened notice period will allow parties additional time to comment on the tariffs and the accompanying cost support."[31] There can be no question that the Commission's intent was for interested parties to have unfettered access to cost support information filed in support of proposed LEC rates. Also, there can be no question that the Commission knew when it adopted this requirement that LECs eventually would be facing some competition. Nevertheless, the Commission requires that data be filed on the public record and has explicitly stated that it expects interested parties to be able to question or challenge the cost support.

Sections 203 and 412 of the Communications Act mandate the

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[29] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Transport Phase I, Second Report and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (Switched Transport Order).

[30] Id. at paras. 119-120.

[31] Id.

tariff-filing obligation, as well as the public nature of tariffs.[32] Fundamentally, a tariff is a public document and must be supported with information that is as available to the public as the tariff itself. To assist in discharging its obligations under Section 203 of the Communications Act, the Commission adopted Part 61 of its Rules to establish requirements pertaining to tariff filings. Section 61.38 of the Rules addresses support requirements pertaining to tariff filings by "dominant carriers,"[33] or those found by the Commission to have "market power" or the ability to control prices, a classification which applies, beyond dispute, to all LECs. Also implementing Section 203, Section 61.49 of the Rules prescribes specific support information required for carriers subject to price cap regulation, including many LECs.

The Commission has indicated that its "established practice

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[32] Common carriers are obligated to file and maintain tariffs; that is, schedules of their charges for services at readily ascertainable rates. See MCI Telecommunications Corp. v. American Telephone and Telegraph Co., 114 S.Ct. 2223, 2231 (1994). ("The tariff-filing requirement is... the heart of the common carrier section of the Communications Act.") Furthermore, Section 412 of the Act provides that "[t]he copies of [the required tariff[s] ... filed with the Commission shall be preserved as public records in the custody of the secretary of the Commission...."

[33] See Section 61.3(o) of the Commission's Rules. Significantly, all LECs are classified and regulated by the Commission as "dominant."

is to require public filing of cost support for tariffs."[34] It has determined such cost support to be so crucial to the tariff review process that it has ordered disclosure even when it is confidential. As it explained in the SCIS Disclosure Order:[35]

> Cost support materials filed with tariffs are routinely available for public inspection under the Commission's Rules, and the Commission has departed from this practice only with great reluctance. The few departures from routine disclosure have tended more toward effectuating disclosure ... than toward the categorical denial of public access. This practice comports with both the Administrative Procedure Act's fundamental interest in administrative decisions reached upon a public record, and the strong preference for disclosure established by the FOIA.[36]

Because of these requirements, the Commission should adopt a rule that does not permit any exceptions to the requirement that tariff support data be made publicly available.

Nevertheless, the Commission suggests that one way of resolving requests by LECs for confidentiality within the context of a tariff review proceeding is to take into account the statutory timeframe for the tariff review process and to require that LECs file any confidential information first, independent of the filing of the tariff transmittal. Under this alternative, the tariff filing could not be made until the request for

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[34] Commission Requirements for Cost Support Material To be Filed with Open Network Architecture Access Tariffs, 7 FCC Rcd 1526 (Com. Car. Bur. 1992), review denied, 9 FCC Rcd 180 (1993) (SCIS Disclosure Review Order), recon. denied, Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC 95-27, rel. February 14, 1995.

[35] Id.

[36] Id. at 1532.

confidentiality was resolved.[37] Because information supporting LEC tariff filings must be publicly available, this proposal falls short of satisfying legal requirements, in MCI's view.[38]

The Commission suggests that another alternative to resolving disclosure issues within the context of the tariff review process is to develop a protective agreement that parties can use to protect information subject to review.[39] Again, because all information in support of proposed LEC tariffs must be made publicly available, this proposal falls short of satisfying legal requirements.

Given the requirement for disclosure of cost support information in the tariff review process, different disclosure policies should not, as the Commission is contemplating, be applied to different phases of the tariff review process.[40] The proper exercise of the Commission's ratemaking authority requires full public disclosure of tariff cost support information at the tariff review stage since, otherwise, the Commission might never obtain enough guidance from petitioners to initiate a tariff investigation in the first place.

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[37] NPRM at para. 44.

[38] A request for confidentiality is unlikely to be resolved under the 7 or 15 day timeframe that is to become effective for streamlined LEC filings under the Telecommunications Act of 1996.

[39] NPRM at para. 44.

[40] NPRM at para. 45. Constitutional due process requirements apply once an investigation is launched, absolutely requiring disclosure of all material, either publicly or at least under protective order. See discussion, supra.

In no event should the Commission continue its current practice of granting sua sponte waivers of the LEC tariff cost support requirement. That practice emasculates the requirement that the burden of proof is on parties requesting confidentiality and, under the circumstances, the approach is arbitrary and capricious in the extreme.

Also, information submitted by applicants in Title III licensing application proceedings should not be withheld from the public. The statutory scheme expressly contemplates public disclosure and participation in such proceedings.[41] Under the circumstances, it would be inappropriate to permit disclosure of confidential information only pursuant to protective orders. However, if the Commission were to adopt an approach favoring the use of protective orders in such proceedings, petitioners should be given an opportunity to supplement their petitions to deny after they have had an opportunity to review protected materials.

Additionally, the Commission should adopt a clarifying requirement that Automated Regulatory Management Information System (ARMIS) data be publicly disclosed. Access to ARMIS data is needed in order to assess whether LEC access services are cost-based, as required by law. Hence, the Commission ought not to consider requests for confidential treatment of ARMIS data under any circumstances.

Finally, the Commission asks whether it would be helpful to develop a "standard form" protective order that could then be

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[41] See NPRM at para. 40.

modified, as appropriate, to fit particular circumstances.[42] As discussed fully above, protective orders are burdensome, and they are not a substitute for public disclosure. However, when appropriately used -- which never would be the case whenever a statute or commission rule requires public disclosure -- a "standard form" protective order might be useful because it would likely minimize disputes between parties over certain provisions and thereby hasten progress in the proceeding.

If the following major changes were made to the proposed draft, MCI could support the form proposed in the NPRM:

-- Paragraph 7.a., the phrase "provided that such persons are not representing or advising or otherwise assisting....;" should be eliminated. The revised sentence would read:

> Authorized Representatives shall be limited to: Counsel for the Reviewing Parties to this proceeding including in-house counsel actively engaged in the conduct of this proceeding and their associated attorney, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;"

-- Paragraph 8, second sentence, which contains the phrase "twenty five cents" should be changed to read "based on cost." The revised sentence would read: "The Submitting Party shall provide copies of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee based on cost."

-- Paragraph 11, last sentence: The following should be deleted: "who has not had access to the Confidential Information nor otherwise learned of its contents." The revised sentence would read:

> This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person.

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[42] NPRM at para. 36.

-- A provision should be added as follows: "The information labelled and marked Confidential shall remain so until the information is public or three years whichever first occurs."

CONCLUSION

WHEREFORE, MCI requests that the Commission consider the above comments in fashioning any new rules concerning material claimed to be confidential and in otherwise addressing the issues provided in its NPRM.

Respectfully Submitted,

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June 14, 1996

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, hereby certify that the foregoing "Comments" was served this 14th day of June, 1996 by mailing copies of thereof, postage prepaid, to the following persons at the address listed below:

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